

AMENDED IN SENATE MAY 6, 2015  
AMENDED IN SENATE APRIL 15, 2015

**SENATE BILL**

**No. 660**

---

**Introduced by ~~Senator~~ *Senators Leno and Hueso***

February 27, 2015

---

An act to amend Sections 305, 307, 308, 309.6, 1701.1, 1701.2, 1701.3, and 1701.4 of, and to add ~~Section~~ *Sections 305.5 and 1701.6* to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, as amended, ~~Hueso~~ *Leno*. Public Utilities ~~Commission~~: ~~proceedings; ex parte communications; Commission.~~

~~The~~

*(1) The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The California Constitution authorizes the commission to establish rules for all public utilities, subject to control by the Legislature, and to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the California Constitution, to confer additional authority and jurisdiction upon the commission that is cognate and germane to the regulation of public utilities. Existing law requires the Governor to designate the president of the commission from among its members and requires the president to direct the executive director, the attorney, and other staff of the commission, except for the Office of Ratepayer Advocates. Existing law authorizes the executive director and the attorney to undertake certain actions if directed or authorized by the*

*president, except as otherwise directed or authorized by vote of the commission.*

*This bill would repeal the requirement that the president direct the executive director, the attorney, and other commission staff. The bill would delete the authority of the president to direct or authorize the executive director and attorney to undertake certain actions, and would instead require that they be directed or authorized to undertake those actions by the commission. The bill would authorize the commission to delegate specific management and internal oversight functions to committees composed of 2 commissioners. The bill would require the commission to vote in an open meeting on the assignment or reassignment of proceeding to one or more commissioners.*

*(2) Existing law requires the commission, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, where appropriate. Existing law requires the assigned commissioner to prepare and issue, by order or ruling, a scoping memo that describes the issues to be considered and the applicable timetable for resolution. Existing law requires the commission, to adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.*

*This bill would require the commission to additionally adopt procedures on disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts. For ratesetting or adjudicatory proceedings, the bill would require a commissioner or an administrative law judge to be disqualified if there is an appearance of bias or prejudice based on specified criteria. The bill would prohibit commission procedures from authorizing a commissioner or administrative law judge from ruling on a motion made by a party to a proceeding to disqualify the commissioner or administrative law judge due to bias or prejudice.*

~~The~~

*(3) The Public Utilities Act requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. For these purposes, quasi-legislative cases are cases that establish policy rulemakings and investigations, which may establish rules affecting an entire industry, adjudication cases are enforcement cases and complaints, except those challenging the reasonableness of any rates or charges, and ratesetting cases are cases in which rates are*

established for a specific company, including general rate cases, performance-based ratemaking, and other ratesetting mechanisms. ~~Existing law requires the commission, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, where appropriate.~~ The act regulates communications in hearings before the commission and defines “ex parte communication” to mean any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. *Existing law defines “person with an interest” to mean, among other things, a person with a financial interest in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest.* Existing law requires the commission, by regulation, to adopt and publish a definition of the terms “decisionmaker” and “persons” for those purposes, along with any requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. The act provides that ex parte communications are prohibited in adjudication cases and are prohibited in ratesetting cases, with certain exceptions. The act requires that ex parte communications be permitted in quasi-legislative cases, without any restrictions. The commission’s Rules of Practice and Procedure define a “decisionmaker” as any commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned administrative law judge, or the Law and Motion Administrative Law Judge. The Rules of Practice and Procedure provide that communications with a commissioners’ personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications with an advisor in ratesetting proceedings are permitted without the restrictions.

This bill would *delete the provision that an ex parte communication concerns a substantive, but not a procedural matter, and instead would provide that an ex parte communication concerns any matter that the commission has not specified as being a procedural matter that is an appropriate subject for ex parte communication. The bill would require the commission to specify those procedural matters that are appropriate subjects for ex parte communications in its Rules of Practice and Procedure. The bill would define a person involved in issuing credit*

*ratings or advising entities or persons who may invest in the shares or operations of any party to a proceeding as a person with a financial interest. The bill would require that the commission, by rule, adopt and publish a definition of decisionmakers, that would be required to include commissioners, each advisor to a commissioner, and an administrative law judge assigned to the proceeding, thereby making the restrictions on ex parte communications applicable to an advisor to a commissioner in a ratesetting proceeding. each commissioner, the attorney for the commission, the executive director of the commission, the personal staff of each commissioner, including each advisor to a commissioner, the administrative law judge assigned to the proceeding, the director of the Energy Division, the director of the Communications Division, the director of the Water and Audits Division, and the director of the Safety and Enforcement Division. The bill would require communications between a person with an interest who is not a party to a commission proceeding and a decisionmaker to be reported by the decisionmaker but would not require the communications to be reported by the person with an interest who is not a party to a commission proceeding.*

*This bill would require that a decisionmaker who makes or receives a prohibited ex parte communication, or who learns that a permissible ex parte communication was not reported as required, to disclose the content of the communication in the record of the proceeding. The bill would require the commission to establish rules for how to handle prohibited ex parte communications, including rules requiring reporting the person initiating the communication and whether the person persisted in continuing the communication after being advised that the communication was prohibited. The bill would require that an ex parte communication not be part of the record of any proceeding and not be considered, or relied upon, for purposes of the commission's resolution of contested issues.*

*This bill would provide that ex parte communications are permitted in quasi-legislative proceedings, but would require that they be reported within 3 working days of the communication by filing a "Notice of Ex Parte Communication" with the commission in accordance with procedures established by the commission for the service of that notice.*

*This bill would require the commission to additionally prohibit communications concerning procedural issues in adjudication cases between parties or persons with an interest and decisionmakers, except for the assigned administrative law judge.*

The exceptions to the prohibition upon ex parte communications in ratesetting proceedings authorize a commissioner to permit oral ex parte communications if all interested parties are invited and given not less than 3 days' notice. If an ex parte communication meeting is granted to any party, it is required that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The exceptions authorize a commissioner to permit written ex parte communications by any party provided that copies of the communication are transmitted to all parties.

This bill would delete the requirement that if an ex parte communication meeting is granted to any ~~party~~, *party in a ratesetting proceeding*, that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The bill would prohibit oral communications concerning procedural issues in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit an oral communication relative to procedural issues if all interested parties are invited and given not less than 3 days' notice. The bill would prohibit written ex parte communications concerning procedural issues in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit a written communication relative to procedural issues by any party provided that copies of the communication are transmitted to all parties on the same day.

This bill would make any violation of the ex parte communications requirements by any person punishable by an unspecified fine or by imprisonment, or by both that fine and imprisonment, thereby imposing a state-mandated local program by creating new crimes.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the application of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 305 of the Public Utilities Code is*  
2     *amended to read:*

3     305. The Governor shall designate a president of the  
4     commission from among the members of the commission. The  
5     president ~~shall direct the executive director, the attorney, and other~~  
6     ~~staff of the commission, except for the staff of the division~~  
7     ~~described in Section 309.5, in the performance of their duties, in~~  
8     ~~accordance with commission policies and guidelines. The president~~  
9     shall preside at all meetings and sessions of the commission.

10    *SEC. 2. Section 305.5 is added to the Public Utilities Code, to*  
11    *read:*

12    305.5. (a) *The commission shall direct the executive director,*  
13    *the attorney, and other staff of the commission, except for the staff*  
14    *of the Office of Ratepayer Advocates described in Section 309.5,*  
15    *in performance of their duties.*

16    (b) *The commission may delegate specific management and*  
17    *internal oversight functions to committees composed of two*  
18    *commissioners. Committees shall meet regularly with staff and*  
19    *shall report to the commission for additional guidance or approval*  
20    *of decisions pertaining to the operations of the commission.*

21    (c) *The commission shall vote in an open meeting on the*  
22    *assignment or reassignment of any proceeding to one or more*  
23    *commissioners.*

24    *SEC. 3. Section 307 of the Public Utilities Code is amended*  
25    *to read:*

26    307. (a) The commission may appoint as attorney to the  
27    commission an attorney at law of this state, who shall hold office  
28    during the pleasure of the commission.

29    (b) The attorney shall represent and appear for the people of the  
30    State of California and the commission in all actions and

proceedings involving any question under this part or under any order or act of the commission. If directed to do so by the ~~president, except as otherwise directed by vote of the~~ commission, the attorney shall intervene, if possible, in any action or proceeding in which any such question is involved.

(c) The attorney shall commence, prosecute, and expedite the final determination of all actions and proceedings directed or authorized by the ~~president, except as otherwise directed or authorized by vote of the~~ commission, advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and the members thereof, and generally perform all duties and services as attorney to the commission that ~~the president, or vote of the commission,~~ *commission* may require of ~~him~~ *him or her*.

*SEC. 4. Section 308 of the Public Utilities Code is amended to read:*

308. (a) The commission shall appoint an executive director, who shall hold office during its pleasure. The executive director shall be responsible for the commission's executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters within the commission's jurisdiction.

(b) The executive director shall keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform ~~such any~~ other duties as ~~the president, or vote of the commission, prescribes. The president commission prescribes.~~ *The commission* may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

(c) The commission may appoint assistant executive directors who may serve warrants and other process in any county or city and county of this state.

*SEC. 5. Section 309.6 of the Public Utilities Code is amended to read:*

309.6. (a) The commission shall adopt procedures on the disqualification of *commissioners and* administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.

1 (b) (1) For ratesetting and adjudicatory proceedings, a  
2 commissioner or administrative law judge shall be disqualified if  
3 there is an appearance of bias or prejudice based on any of the  
4 following:

5 (A) Actions taken during the proceeding.

6 (B) Private communications before the commencement of the  
7 proceeding to influence the request for relief sought by any party  
8 to the proceeding.

9 (C) Actions demonstrating any commitment to provide relief to  
10 a party.

11 (2) Past work experience by the commissioner or administrative  
12 law judge shall not be a sufficient basis for demonstrating an  
13 appearance of bias or prejudice pursuant to paragraph (1).

14 (c) The commission procedures shall not authorize a  
15 commissioner or administrative law judge to rule on a motion  
16 made by a party to a proceeding to disqualify the commissioner  
17 or administrative law judge due to bias or prejudice.

18 ~~(b)~~

19 (d) The commission shall develop the procedures with the  
20 opportunity for public review and comment.

21 **SECTION 4.**

22 *SEC. 6.* Section 1701.1 of the Public Utilities Code is amended  
23 to read:

24 1701.1. (a) The commission, consistent with due process,  
25 public policy, and statutory requirements, shall determine whether  
26 a proceeding requires a hearing. The commission shall determine  
27 whether the matter requires a quasi-legislative, an adjudication,  
28 or a ratesetting hearing. The commission's decision as to the nature  
29 of the proceeding shall be subject to a request for rehearing within  
30 10 days of the date of that decision. If that decision is not appealed  
31 to the commission within that time period it shall not be  
32 subsequently subject to judicial review. Only those parties who  
33 have requested a rehearing within that time period shall  
34 subsequently have standing for judicial review and that review  
35 shall only be available at the conclusion of the proceeding. The  
36 commission shall render its decision regarding the rehearing within  
37 30 days. The commission shall establish rules regarding ex parte  
38 communication on case categorization issues.

39 (b) The commission upon initiating a hearing shall assign one  
40 or more commissioners to oversee the case and an administrative



law judge where appropriate. The assigned commissioner shall schedule a prehearing conference. The assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution.

(c) (1) Quasi-legislative cases, for purposes of this article, are cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.

(2) Adjudication cases, for purposes of this article, are enforcement cases and complaints except those challenging the reasonableness of any rates or charges as specified in Section 1702.

(3) Ratesetting cases, for purposes of this article, are cases in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

(d) (1) “Ex parte communication,” for purposes of this article, means any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues; *any matter that the commission has not specified as being a procedural matter that is an appropriate subject for ex parte communication*, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. *The commission shall specify those procedural matters that are appropriate subjects for ex parte communications in its Rules of Practice and Procedure.* “Person with an interest,” for purposes of this article, means any of the following:

(A) Any applicant, an agent or an employee of the applicant, or a person receiving consideration for representing the applicant, or a participant in the proceeding on any matter before the commission.

(B) Any person with a financial interest, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest. *A person involved in issuing credit ratings or advising entities or persons who may invest in the shares or operations of any party to a proceeding is a person with a financial interest.*

1 (C) A representative acting on behalf of any civic,  
2 environmental, neighborhood, business, labor, trade, or similar  
3 organization who intends to influence the decision of a commission  
4 member on a matter before the commission.

5 (2) The commission shall by rule adopt and publish a definition  
6 of decisionmakers and persons for purposes of this section, along  
7 with any requirements for written reporting of ex parte  
8 communications and appropriate sanctions for noncompliance with  
9 any rule proscribing ex parte communications. *The definition of*  
10 *decisionmakers shall include, but is not limited to, each*  
11 *commissioner, the attorney for the commission, the executive*  
12 *director of the commission, the personal staff of each*  
13 *commissioner, including each advisor to a commissioner, the*  
14 *administrative law judge assigned to the proceeding, the director*  
15 *of the Energy Division, the director of the Communications*  
16 *Division, the director of the Water and Audits Division, and the*  
17 *director of the Safety and Enforcement Division. The rules shall*  
18 *provide that reportable communications shall be reported by the*  
19 *party, whether the communication was initiated by the party or*  
20 *the decisionmaker. The definition of decisionmakers shall include,*  
21 *but is not limited to, commissioners, each advisor to a*  
22 *commissioner appointed pursuant to Section 309.1, and an*  
23 *administrative law judge assigned to the proceeding. However,*  
24 *communications between a person with an interest who is not a*  
25 *party to a commission proceeding and a decisionmaker shall be*  
26 *reported by the decisionmaker in accordance with procedures*  
27 *established pursuant to this section and shall not be required to*  
28 *be reported by the person with an interest who is not a party to a*  
29 *commission proceeding. Communications shall be reported within*  
30 *three working days of the communication by filing a “Notice of*  
31 *Ex Parte Communication” with the commission in accordance*  
32 *with the procedures established by the commission for the service*  
33 *of that notice. The notice shall include the following information:*  
34 (A) The date, time, and location of the communication, whether  
35 it was oral, written, or a combination, and the communications  
36 medium utilized.

37 (B) The identity of the recipient and the person initiating the  
38 communication, as well as the identity of any persons present  
39 during the communication.

1 (C) A description of the party's, but not the decisionmaker's,  
2 communication and its content, to which shall be attached a copy  
3 of any written material or text used during the communication.

4 (3) Any decisionmaker who makes or receives a prohibited ex  
5 parte communication, or who learns that a permissible ex parte  
6 communication was not reported pursuant to paragraph (2), shall  
7 disclose the content of the communication in the record of the  
8 proceeding. *The commission shall establish rules for how to handle*  
9 *prohibited ex parte communications, including rules requiring*  
10 *reporting the person initiating the communication and whether*  
11 *the person persisted in continuing the communication after being*  
12 *advised that the communication was prohibited.*

13 (4) *An ex parte communication shall not be part of the record*  
14 *of any proceeding and shall not be considered, or relied upon, for*  
15 *purposes of the commission's resolution of contested issues.*

16 SEC. 7. *Section 1701.2 of the Public Utilities Code is amended*  
17 *to read:*

18 1701.2. (a) If the commission pursuant to Section 1701.1 has  
19 determined that an adjudication case requires a hearing, the  
20 procedures prescribed by this section shall be applicable. The  
21 assigned commissioner or the assigned administrative law judge  
22 shall hear the case in the manner described in the scoping memo.  
23 The scoping memo shall designate whether the assigned  
24 commissioner or the assigned administrative law judge shall preside  
25 in the case. The commission shall provide by rule for peremptory  
26 challenges and challenges for cause of the administrative law judge.  
27 Challenges for cause shall include, but not be limited to, financial  
28 interests and prejudice. The rule shall provide that all parties are  
29 entitled to one peremptory challenge of the assignment of the  
30 administrative law judge in all cases. All parties are entitled to  
31 unlimited peremptory challenges in any case in which the  
32 administrative law judge has within the previous 12 months served  
33 in any capacity in an advocacy position at the commission, been  
34 employed by a regulated public utility, or has represented a party  
35 or has been a party of interest in the case. The assigned  
36 commissioner or the administrative law judge shall prepare and  
37 file a decision setting forth recommendations, findings, and  
38 conclusions. The decision shall be filed with the commission and  
39 served upon all parties to the action or proceeding without undue  
40 delay, not later than 60 days after the matter has been submitted

1 for decision. The decision of the assigned commissioner or the  
2 administrative law judge shall become the decision of the  
3 commission if no further action is taken within 30 days. Any  
4 interested party may appeal the decision to the commission,  
5 provided that the appeal is made within 30 days of the issuance of  
6 the decision. The commission may itself initiate a review of the  
7 proposed decision on any grounds. The commission decision shall  
8 be based on the record developed by the assigned commissioner  
9 or the administrative law judge. A decision different from that of  
10 the assigned commissioner or the administrative law judge shall  
11 be accompanied by a written explanation of each of the changes  
12 made to the decision.

13 (b) Notwithstanding Section 307, an officer, employee, or agent  
14 of the commission that is personally involved in the prosecution  
15 or in the supervision of the prosecution of an adjudication case  
16 before the commission shall not participate in the decision of the  
17 case, or in the decision of any factually related adjudicatory  
18 proceeding, including participation in or advising the commission  
19 as to findings of fact, conclusions of law, or orders. An officer,  
20 employee, or agent of the commission that is personally involved  
21 in the prosecution or in the supervision of the prosecution of an  
22 adjudication case may participate in reaching a settlement of the  
23 case, but shall not participate in the decision of the commission to  
24 accept or reject the settlement, except as a witness or counsel in  
25 an open hearing or a hearing closed pursuant to subdivision (d).  
26 The Legislature finds that the commission performs both  
27 prosecutorial and adjudicatory functions in an adjudication case  
28 and declares its intent that an officer, employee, or agent of the  
29 commission, including its attorneys, may perform only one of  
30 those functions in any adjudication case or factually related  
31 adjudicatory proceeding.

32 (c) (1) Ex parte communications shall be prohibited in  
33 adjudication cases.

34 (2) *Any oral or written communications concerning procedural*  
35 *issues in adjudication cases between parties or persons with an*  
36 *interest and decisionmakers, except the assigned administrative*  
37 *law judge, shall be prohibited.*

38 (d) Notwithstanding any other law, the commission may meet  
39 in a closed hearing to consider the decision that is being appealed.

1 The vote on the appeal shall be in a public meeting and shall be  
2 accompanied with an explanation of the appeal decision.

3 (e) Adjudication cases shall be resolved within 12 months of  
4 initiation unless the commission makes findings why that deadline  
5 cannot be met and issues an order extending that deadline. In the  
6 event that a rehearing of an adjudication case is granted, the parties  
7 shall have an opportunity for final oral argument.

8 (f) (1) The commission may determine that the respondent  
9 lacks, or may lack, the ability to pay potential penalties or fines  
10 or to pay restitution that may be ordered by the commission.

11 (2) If the commission determines that a respondent lacks, or  
12 may lack, the ability to pay, the commission may order the  
13 respondent to demonstrate, to the satisfaction of the commission,  
14 sufficient ability to pay potential penalties, fines, or restitution that  
15 may be ordered by the commission. The respondent shall  
16 demonstrate the ability to pay, or make other financial  
17 arrangements satisfactory to the commission, within seven days  
18 of the commission commencing an adjudication case. The  
19 commission may delegate to the attorney to the commission the  
20 determination of whether a sufficient showing has been made by  
21 the respondent of an ability to pay.

22 (3) Within seven days of the commission's determination of the  
23 respondent's ability to pay potential penalties, fines, or restitution,  
24 the respondent shall be entitled to an impartial review by an  
25 administrative law judge of the sufficiency of the showing made  
26 by the respondent of the respondent's ability to pay. The review  
27 by an administrative law judge of the ability of the respondent to  
28 pay shall become part of the record of the adjudication and is  
29 subject to the commission's consideration in its order resolving  
30 the adjudication case. The administrative law judge may enter  
31 temporary orders modifying any financial requirement made of  
32 the respondent pending the review by the administrative law judge.

33 (4) A respondent that is a public utility regulated under a rate  
34 of return or rate of margin regulatory structure or that has gross  
35 annual revenues of more than one hundred million dollars  
36 (\$100,000,000) generated within California is presumed to be able  
37 to pay potential penalties or fines or to pay restitution that may be  
38 ordered by the commission, and, therefore, paragraphs (1) to (3),  
39 inclusive, do not apply to that respondent.

1     ~~SEC. 2.~~

2     *SEC. 8.* Section 1701.3 of the Public Utilities Code is amended  
3 to read:

4     1701.3. (a) If the commission pursuant to Section 1701.1 has  
5 determined that a ratesetting case requires a hearing, the procedures  
6 prescribed by this section shall be applicable. The assigned  
7 commissioner shall determine prior to the first hearing whether  
8 the commissioner or the assigned administrative law judge shall  
9 be designated as the principal hearing officer. The principal hearing  
10 officer shall be present for more than one-half of the hearing days.  
11 The decision of the principal hearing officer shall be the proposed  
12 decision. An alternate decision may be issued by the assigned  
13 commissioner or the assigned administrative law judge who is not  
14 the principal hearing officer. The commission shall establish a  
15 procedure for any party to request the presence of a commissioner  
16 at a hearing. The assigned commissioner shall be present at the  
17 closing arguments of the case. The principal hearing officer shall  
18 present the proposed decision to the full commission in a public  
19 meeting. The alternate decision, if any, shall also be presented to  
20 the full commission at that public meeting. The alternate decision  
21 shall be filed with the commission and shall be served on all parties  
22 simultaneously with the proposed decision.

23     The presentation to the full commission shall contain a record  
24 of the number of days of the hearing, the number of days that each  
25 commissioner was present, and whether the decision was completed  
26 on time.

27     (b) The commission shall provide by regulation for peremptory  
28 challenges and challenges for cause of the administrative law judge.  
29 Challenges for cause shall include, but not be limited to, financial  
30 interests and prejudice. All parties shall be entitled to unlimited  
31 peremptory challenges in any case in which the administrative law  
32 judge has within the previous 12 months served in any capacity  
33 in an advocacy position at the commission, been employed by a  
34 regulated public utility, or has represented a party or has been a  
35 party of interest in the case.

36     (c) (1) Ex parte communications are prohibited in ratesetting  
37 cases. However, oral ex parte communications may be permitted  
38 at any time by any commissioner if all interested parties are invited  
39 and given not less than three days' notice. Written ex parte  
40 communications may be permitted by any party provided that

1 copies of the communication are transmitted to all parties on the  
2 same day.

3 (2) Oral communications concerning procedural issues in  
4 ratesetting cases between parties or persons with an interest and  
5 decisionmakers, except the assigned administrative law judge, are  
6 prohibited, except that an oral communication may be permitted  
7 at any time by any commissioner if all interested parties are invited  
8 and given not less than three days' notice.

9 (3) Written communications concerning procedural issues in  
10 ratesetting cases between parties or persons with an interest and  
11 decisionmakers, except the assigned administrative law judge, are  
12 prohibited, except that a commissioner may permit a written  
13 communication by any party if copies of the communication are  
14 transmitted to all parties on the same day.

15 (d) Any party has the right to present a final oral argument of  
16 its case before the commission. Those requests shall be scheduled  
17 in a timely manner. A quorum of the commission shall be present  
18 for the final oral arguments.

19 (e) The commission may, in issuing its decision, adopt, modify,  
20 or set aside the proposed decision or any part of the decision based  
21 on evidence in the record. The final decision of the commission  
22 shall be issued not later than 60 days after the issuance of the  
23 proposed decision. Under extraordinary circumstances the  
24 commission may extend this date for a reasonable period. The  
25 60-day period shall be extended for 30 days if any alternate  
26 decision is proposed pursuant to Section 311.

27 ~~SEC. 3.~~

28 *SEC. 9.* Section 1701.4 of the Public Utilities Code is amended  
29 to read:

30 1701.4. (a) If the commission pursuant to Section 1701.1 has  
31 determined that a quasi-legislative case requires a hearing, the  
32 procedures prescribed by this section shall be applicable. The  
33 assigned administrative law judge shall act as an assistant to the  
34 assigned commissioner in quasi-legislative cases. The assigned  
35 commissioner shall be present for formal hearings. The assigned  
36 commissioner shall prepare the proposed rule or order with the  
37 assistance of the administrative law judge. The assigned  
38 commissioner shall present the proposed rule or order to the full  
39 commission in a public meeting. The report shall include the

1 number of days of hearing and the number of days that the  
2 commissioner was present.

3 (b) Ex parte communications shall be permitted. Any ex parte  
4 communication shall be reported within three working days of the  
5 communication by filing a “Notice of Ex Parte Communication”  
6 with the commission in accordance with procedures established  
7 by the commission for the service of that notice.

8 (c) Any party has the right to present a final oral argument of  
9 its case before the commission. Those requests shall be scheduled  
10 in a timely manner. A quorum of the commission shall be present  
11 for the final oral arguments.

12 (d) The commission may, in issuing its rule or order, adopt,  
13 modify, or set aside the proposed decision or any part of the rule  
14 or order. The final rule or order of the commission shall be issued  
15 not later than 60 days after the issuance of the proposed rule or  
16 order. Under extraordinary circumstances the commission may  
17 extend this date for a reasonable period. The 60-day period shall  
18 be extended for 30 days if any alternate rule or order is proposed  
19 pursuant to Section 311.

20 ~~SEC. 4.~~

21 *SEC. 10* Section 1701.6 is added to the Public Utilities Code,  
22 to read:

23 1701.6. A violation of the ex parte communications  
24 requirements of this article by any person is punishable by a fine  
25 not to exceed \_\_\_\_\_, or by imprisonment, or by both that fine and  
26 imprisonment.

27 ~~SEC. 5.~~

28 *SEC. 11.* No reimbursement is required by this act pursuant to  
29 Section 6 of Article XIII B of the California Constitution because  
30 the only costs that may be incurred by a local agency or school  
31 district will be incurred because this act creates a new crime or  
32 infraction, eliminates a crime or infraction, or changes the penalty  
33 for a crime or infraction, within the meaning of Section 17556 of  
34 the Government Code, or changes the definition of a crime within  
35 the meaning of Section 6 of Article XIII B of the California  
36 Constitution.